United Nations S/AC.49/2014/2

Security Council

Distr.: General
6 February 2014

Original: English

Security Council Committee established pursuant to resolution 1718 (2006)

Note verbale dated 5 February 2014 from the Permanent Mission of Austria to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Austria to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and, with regard to paragraph 25 of Security Council resolution 2094 (2013), has the honour to transmit the following report:

1. Austria and the other member States of the European Union have jointly implemented the additional restrictive measures against the Democratic People's Republic of Korea imposed by Security Council resolutions 2087 (2013) and 2094 (2013) by taking the following common measures:[1]

Council Decision 2013/88/CFSP of 18 February 2013 concerning restrictive measures against the Democratic People's Republic of Korea,[2] amending Council Decision 2010/800/CFSP of 22 December 2010[3]

The Council Decision notes the adoption on 22 January 2013 of Security Council resolution 2087 (2013) and provides the basis for European Union-specific implementing measures within the scope of that resolution, notably:

- Designation of additional persons and entities (travel ban and asset freeze), in accordance with paragraph 5 (a) of Security Council resolution 2087 (2013).
- A prohibition to supply, sell or transfer to the Democratic People's Republic of Korea additional items, materials, equipment, goods and technology which could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, in accordance with paragraph 5 (b) of Security Council resolution 2087 (2013).
- An obligation to exercise vigilance and restraint regarding the entry into or transit through the territories of European Union member States with regard to individuals working on behalf or at the direction of a designated individual or

[1] All common measures are published in the *Official Journal of the European Union*.
[2] *Official Journal of the European Union* L 46, 19 February 2013.
[3] *Official Journal of the European Union* L 341, 23 December 2010.

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entity, in accordance with paragraph 12 of Security Council resolution 2087 (2013).

- Inclusion of a provision concerning no claims in connection with the performance of any contract or transaction affected by the measures decided on pursuant to relevant Security Council resolutions or measures of the European Union or any member State in accordance with relevant decisions of the Security Council, in accordance with paragraph 13 of Security Council resolution 2087 (2013).

It is noted that certain provisions within the scope of Security Council resolution 2087 (2013) did not require new European Union measures for implementation, as the European Union had already taken similar measures on an autonomous basis at an earlier stage, in particular partially concerning paragraph 5 (a) and concerning paragraph 6 of Security Council resolution 2087 (2013). It is also noted that, in addition, Council Decision 2013/88/CFSP includes additional European Union autonomous measures, in view of the European Union's deep concern about the violation by the Democratic People's Republic of Korea of international obligations.

With a view to ensuring a uniform application of these measures by economic operators in all member States, regulatory action at the level of the European Union has been taken in order to implement the measures of Council Decision 2013/88/CFSP falling under community competence.

The following measure of Council Decision 2013/88/CFSP falling within the scope of Security Council resolution 2087 (2013) is implemented by Commission Implementing Regulation (EU) No. 137/2013 of 18 February 2013,[4] amending Regulation (EC) No. 329/2007[5] concerning restrictive measures against the Democratic People's Republic of Korea:

- Designation of additional persons and entities, where it concerns the freezing of funds and economic resources.

The following measures of Council Decision 2013/88/CFSP falling within the scope of Security Council resolution 2087 (2013) are implemented by Council Regulation (EU) No. 296/2013 of 26 March 2013,[6] amending Regulation (EC) No. 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea:

- Prohibition to supply, sell or transfer to the Democratic People's Republic of Korea additional items, materials, equipment, goods and technology which could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, including related technical assistance and brokering services and financing or financial assistance.
- Inclusion of a provision concerning no claims in connection with the performance of any contract or transaction affected by the measures decided on pursuant to relevant Security Council resolutions or measures of the

[4] *Official Journal of the European Union* L 46, 19 February 2013.
[5] *Official Journal of the European Union* L 88, 29 March 2007.
[6] *Official Journal of the European Union* L 90, 28 March 2013.

European Union or any member State in accordance with relevant decisions of the Security Council.

The above-mentioned Council Regulations are binding in their entirety and directly applicable in all member States of the European Union. Regulation (EC) No. 329/2007 requires member States to determine the penalties applicable to infringements of their provisions (see below for more details).

Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea,[7] amending Council Decision 2010/800/CFSP of 22 December 2010[8]

The Council Decision notes the adoption on 7 March 2013 of Security Council resolution 2094 (2013) and provides the basis for European Union-specific implementing measures within the scope of that resolution, notably:

- Designation of additional persons and entities (travel ban and asset freeze) and insertion of additional criteria for designation, in accordance with paragraphs 8, 9 and 10 of Security Council resolution 2094 (2013).
- A prohibition to supply, sell or transfer to the Democratic People's Republic of Korea additional items, materials, equipment, goods and technology which could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction related programmes, or to activities prohibited by Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013), or by the European Union's decision or to the evasion of measures imposed by those Security Council resolutions or the European Union's decision, in accordance with paragraphs 7, 20 and 22 of resolution 2094 (2013).
- A prohibition to provide financial support for trade with the Democratic People's Republic of Korea, including in relation to activities prohibited by Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013), or by the European Union's decision or to the evasion of measures imposed by those Security Council resolutions or the European Union's decision, in accordance with paragraph 15 of Security Council resolution 2094 (2013).
- An obligation to prevent the provision of financial services including in relation to bulk cash and regarding activities prohibited by Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013), or by the European Union's decision or to the evasion of measures imposed by those Security Council resolutions or the European Union's decision, in accordance with paragraphs 11 and 14 of Security Council resolution 2094 (2013).
- A prohibition on the opening of new branches, subsidiaries, or representative offices of banks of the Democratic People's Republic of Korea in the territories of the member States of the European Union, the taking of an ownership interest in banks under the jurisdiction of member States, the establishment of correspondent banking relationships with banks under the jurisdiction of member States and the maintenance of correspondent banking

[7] *Official Journal of the European Union* L 111, 23 April 2013.

[8] *Official Journal of the European Union* L 341, 23 December 2010.

relationships with banks under the jurisdiction of member States if member States have information that provides reasonable grounds to believe that this could contribute to the nuclear or ballistic missiles programmes or other activities of the Democratic People's Republic of Korea prohibited by Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013) or by this Decision, or to the evasion of measures imposed by those Security Council resolutions or by this Decision, in accordance with paragraph 12 of Security Council resolution 2094 (2013).

- An obligation to inspect all cargo to and from the Democratic People's Republic of Korea in the territory of member States of the European Union, or transiting through their territory, or cargo brokered or facilitated by the Democratic People's Republic of Korea or its nationals, or persons or entities acting on their behalf, including at their airports and seaports, if they have information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013) or under this Decision, in accordance with paragraph 16 of Security Council resolution 2094 (2013).

- An obligation to deny entry into the ports of member States of the European Union of any vessel that has refused to allow an inspection after such an inspection has been authorized by the vessel's flag State, or if any Democratic People's Republic of Korea-flagged vessel has refused to be inspected pursuant to paragraph 12 of Security Council resolution 1874 (2009), in accordance with paragraph 17 of Security Council resolution 2094 (2013).

- An obligation to deny permission to land in, take off from or overfly the territory of member States of the European Union to any aircraft, if they have information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013) or under this Decision, in accordance with paragraph 18 of Security Council resolution 2094 (2013).

- An obligation to expel nationals of the Democratic People's Republic of Korea who member States of the European Union determine are working on behalf of, or at the direction of, a person or entity listed in annex I or annex II, or who they determine are assisting the evasion of sanctions or violating the provisions of Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013) or of this Decision, from their territories for the purpose of repatriation to the Democratic People's Republic of Korea, consistent with applicable national and international law, in accordance with paragraph 10 of Security Council resolution 2094 (2013).

- An obligation to exercise enhanced vigilance over diplomatic personnel of the Democratic People's Republic of Korea so as to prevent such individuals from contributing to its nuclear or ballistic missile programmes, or other activities prohibited by Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013) or by this Decision, or to the evasion of measures imposed by those Security Council resolutions or by this Decision, in accordance with paragraph 24 of Security Council resolution 2094 (2013).

It is noted that certain provisions within the scope of Security Council resolution 2094 (2013) did not require new European Union measures for implementation, as the European Union had already taken similar measures on an autonomous basis at an earlier stage, in particular concerning a number of specific elements pertaining to the measures mentioned above.

With a view to ensuring a uniform application of these measures by economic operators in all member States, regulatory action at the level of the Union has been taken in order to implement the measures of Council Decision 2013/88/CFSP falling under community competence.

The following measure of Council Decision 2013/183/CFSP falling within the scope of Security Council resolution 2094 (2013) is implemented by Commission Implementing Regulation (EU) No. 370/2013 of 22 April 2013,[9] amending Regulation (EC) No. 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea:

- Designation of additional persons and entities, where it concerns the freezing of funds and economic resources.

The following measures of Council Decision 2013/183/CFSP falling within the scope of Security Council resolution 2094 (2013) are implemented by Council Regulation (EU) No. 697/2013 of 22 July 2013,[10] amending Regulation (EC) No. 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea:

- Insertion of additional criteria for designation, where it concerns the freezing of funds and economic resources.
- Prohibition to supply, sell or transfer to the Democratic People's Republic of Korea additional items, materials, equipment, goods and technology which could contribute to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, including related technical assistance and brokering services.
- Obligation to prevent the provision of financial services in relation to prohibited activities.
- Prohibition on the opening of new branches, subsidiaries or representative offices of banks of the Democratic People's Republic of Korea in the territories of the member States of the European Union, the taking of an ownership interest in banks under the jurisdiction of member States, the establishment of correspondent banking relationships with banks under the jurisdiction of member States and the maintenance of correspondent banking relationships with banks under the jurisdiction of member States if member States have information that provides reasonable grounds to believe that this could contribute to the nuclear or ballistic missiles programmes of the Democratic People's Republic of Korea.
- Obligation to inspect all cargo to and from the Democratic People's Republic of Korea in the territory of member States of the European Union, or transiting through their territory, or cargo brokered or facilitate by the Democratic

[9] *Official Journal of the European Union* L 111, 23 April 2013.
[10] *Official Journal of the European Union* L 198, 23 July 2013.

People's Republic of Korea or its nationals, or persons or entities acting on their behalf, including at their airports and seaports.

- Obligation to deny entry into the ports of member States of the European Union of any vessel that has refused to allow an inspection after such an inspection has been authorized by the vessel's flag State, or if any Democratic People's Republic of Korea-flagged vessel has refused to be inspected pursuant to paragraph 12 of Security Council resolution 1874 (2009).
- Obligation to deny permission to land in, take off from or overfly the territory of member States of the European Union to any aircraft, if they have information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under Security Council resolutions 1718 (2006), 1874 (2009), 2087 (2013) or 2094 (2013) or under this Decision.

2. In addition to the common European Union measures, within the scope of Austria's national implementation competence, the Austrian authorities will apply the following Austrian legislation in implementing the restrictive measures against the Democratic People's Republic of Korea imposed by the Security Council:

- Sanctions Act 2010 (Federal Law Gazette I No. 36/2010, as amended)
- Foreign Trade Act (Federal Law Gazette I No. 26/2011, as amended), supplemented by the First Foreign Trade Regulation (Federal Law Gazette II No. 343/2011, as amended) and the Second Foreign Trade Regulation (Federal Law Gazette II No. 4183/2011, as amended)
- War Materials Act (Federal Law Gazette I No. 57/2001, as amended) and War Materials Regulation (Federal Law Gazette No. 624/1977)
- Foreign Exchange Act (Federal Law Gazette I No. 123/2003, as amended)
- Banking Act (Federal Law Gazette No. 532/1993, as amended)

3. As regards restrictions on admission (visa ban), Austria has the following national legislation, which, together with Council Decision 2013/183/CFSP and Regulation (EC) No. 539/2001,[11] provides the basis for refusal of admission and denial of requests for a visa:

- Aliens Police Act 2005 (Federal Law Gazette I No. 100/2005, as amended)
- Settlement and Residence Act (Federal Law Gazette I No. 100/2005, as amended)

4. The above-mentioned Council Regulations are binding in their entirety and directly applicable in all member States of the European Union, including Austria. Regulation (EC) No. 329/2007 requires member States to determine the penalties applicable to infringements of their provisions. Penalties for violations of directly applicable European Union law are set out in the relevant sections of the above-mentioned Austrian legislation. Non-compliance may constitute a criminal offence punishable by up to five years of imprisonment or payment of a fine of up to 360 daily rates (e.g. in the case of the Foreign Trade Act).

[11] Regulation (EC) No. 539/2001 applies neither to Ireland nor to the United Kingdom.